

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

**Mt. Carmel Public Utility Company
and Koger & Bramlet, P.C.**

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**Petition for approval of contract
under 220 ILCS 5/7-101, Et. seq.,
and Ill. Adm. Code Section 310.60**

07-0510

ORDER

By the Commission:

Introduction

On October 12, 2007, Mt. Carmel Public Utility Company ("Mt. Carmel") filed, with the Illinois Commerce Commission ("Commission"), a Petition for Approval of an affiliate contract with Koger & Bramlet, P.C. pursuant to Section 7-101 of the Public Utilities Act ("Act"), 220 ILCS 5/7-101.

Hearing was held in this matter on November 29, 2007 at the offices of the Commission located at 527 E. Capitol, Springfield, Illinois. Appearances at the hearing were entered by Eric Bramlet on behalf of Mt. Carmel, and by Staff of the Illinois Commerce Commission ("Staff"). At hearing, the testimony of Phillip Barnhard, IV on behalf of Mt. Carmel, and Mary Everson, on behalf of Staff, were admitted into evidence in this proceeding. Mt. Carmel agreed to submit a copy of the final signed executed agreement as a filing on the Commission's e-Docket system in this docket, with a copy to the Commission's Accounting Department Manager and to the Office of the Chief Clerk of the Commission within 60 days of the Commission's order. At the conclusion of the hearing, the record was marked "Heard and Taken." No petitions to intervene were received in this docket.

Statutory Authority: Section 7-101

As noted above, Mt. Carmel seeks authorization, pursuant to Section 7-101 of the Act, to enter into a contract with an affiliate in the form contained as an attachment to its Petition. Section 7-101 of the Act reads, in part, as follows:

3) No management, construction, engineering, supply, financial or similar contract and no contract or arrangement for the purchase, sale, lease or exchange of any property or for the furnishing of any service, property or thing, hereafter made with any affiliated interest, as hereinbefore defined, shall be effective unless it has first been filed with and consented to by the Commission or is exempted in accordance with

the provisions of this Section or of Section 16-111 of this Act. The Commission may condition such approval in such manner as it may deem necessary to safeguard the public interest. If it be found by the Commission, after investigation and a hearing, that any such contract or arrangement is not in the public interest, the Commission may disapprove such contract or arrangement. Every contract or arrangement not consented to or excepted by the Commission as provided for in this Section is void.

The consent to, or exemption or waiver of consent to, any contract or arrangement under this Section or Section 16-111, does not constitute approval of payments there under for the purpose of computing expense of operation in any rate proceeding. However, the Commission shall not require a public utility to make purchases at prices exceeding the prices offered by an affiliated interest, and the Commission shall not be required to disapprove or disallow, solely on the ground that such payments yield the affiliated interest a return or rate of return in excess of that allowed the public utility, any portion of payments for purchases from an affiliated interest.

Background

Mt. Carmel is an Illinois corporation operating as a public utility in Illinois pursuant to the Act. Mt. Carmel had not previously sought Commission approval of any affiliate agreements.

The contract which is the subject of this Petition involves the services of Koger & Bramlet, P.C., which provides legal services to Mt. Carmel, as well as rents office space from Mt. Carmel. A member of the law firm is also a stockholder of Mt. Carmel, as well as a member of its Board of Directors. Mt. Carmel currently has pending before the Commission Docket No. 07-0357, seeking an increase in electric and natural gas rates. In Staff's prepared testimony for the rate case, Staff indicated its belief that Mt. Carmel and Koger & Bramlet were affiliated interests, and the agreement between them needed to be formalized and presented to the Commission for approval. Mt. Carmel thereafter docketed this proceeding seeking approval of the affiliate agreement.

Staff of the Illinois Commerce Commission reviewed the proposed affiliate agreement, and on November 20, 2007, filed testimony indicating that Staff had no objection to Mt. Carmel's request and recommended the Commission approve Mt. Carmel's agreement as attached to its Petition.

Commission's Conclusions, Findings and Ordering Paragraphs

Having reviewed the record, the Commission finds that the proposed affiliate agreement is in the public interest within the meaning of Section 7-101(3) of the Act, and should be authorized, subject to the conditions set forth herein.

Accordingly, Mt. Carmel's request for authorization to enter into affiliate agreement should be granted. Pursuant to 7-101 of the Act, the authorization granted herein does not constitute approval, for ratemaking purposes, of amounts expended by Mt. Carmel in connection with the agreement.

The Commission, having considered the entire record herein, is of the opinion and finds that:

- (1) Mt. Carmel, an Illinois corporation, is a public utility within the meaning of the Public Utilities Act;
- (2) the Commission has jurisdiction over the parties hereto and the subject matter hereof;
- (3) the facts recited and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and law;
- (4) Mt. Carmel and Koger & Bramlet, P.C. are "affiliated interests" as that term is defined in Section 7-101 of the Act;
- (5) Mt. Carmel's request for approval to enter into the Affiliate Agreement between Mt. Carmel and Koger & Bramlet, P.C. is in the public interest within the meaning of Section 7-101 of the Act, and should be approved, subject to the conditions set forth herein;
- (6) a copy of the final signed executed Agreement shall be filed on the Commission's e-Docket filing system, and a copy of the executed Agreement shall be provided to the Chief Clerk's Office and to the Manager of the Accounting Department within 60 days of execution;
- (7) the approval granted herein does not constitute approval, for ratemaking purposes, of the costs incurred in connection with Agreement.

IT IS THEREFORE ORDERED by the Commission that Mt. Carmel Public Utility Company's request for authorization to enter into and carry out the terms of the Affiliate Agreement between Mt. Carmel Public Utility Company and Koger & Bramlet, P.C., as attached to the Petition filed October 12, 2007, is hereby granted and "consented to" pursuant to Section 7-101 of the Act, subject to the conditions set forth herein.

IT IS FURTHER ORDERED that Mt. Carmel Public Utility Company shall submit a copy of the signed and executed Agreement as a filing on the Commission's e-Docket filing system in this docket, and provide a copy of the executed Agreement to the Chief Clerk's Office and the Manager of the Accounting Department of the Commission within 60 days of execution.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 19th day of December, 2007

(SIGNED) CHARLES E. BOX

Chairman